

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN DICK HAINES**, on February 1, 2001 at 8:30 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Dick Haines, Chairman (R)
Sen. William Crismore, Vice Chairman (R)
Sen. Linda Nelson (D)
Rep. Joe Tropila (D)

Members Excused: Rep. Christine Kaufmann
Sen. Bill Tash

Members Absent: None.

Staff Present: Gary Hamel, Legislative Branch
Amber Sauer, Committee Secretary
Doug Schmitz, OBPP

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Department of Environmental
Quality, Enforcement Division;
Remediation Division. 1/30/01
Executive Action: Department of Environmental
Quality, Planning, Prevention
And Assistance Division;
Enforcement Division;
Remediation Division

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

PLANNING, PREVENTION AND ASSISTANCE DIVISION (continued)

CHAIRMAN HAINES opened the meeting with an explanation to the Department of Environmental Quality (DEQ) that decision packages with general fund monies involved can be discussed but executive action will be postponed until later. The Department asked for additional time to search for alternative funding sources.

Mr. Gary Hamel, LFD, continued with DP-4 Base Adjustment to Resource Protection Plan which had been briefly discussed the previous day. It is to fund increased operating costs due to high rates for in-state lodging and indirect charges. Mr. Hamel referred to the following exhibit in discussion of all the base adjustment decision packages.

EXHIBIT (jnh26a01)

Mr. Art Compton, Administrator, Planning, Prevention and Assistance Division, stated the base adjustment was brought about by three major areas—two areas of federal regulations, five vacant positions, and general fund money appropriated last session that was not expended. The general fund money is used for federal program match on the Total Maximum Daily Load (TMDL) and the air grant. He also explained the development cost for the AIRS database was deducted from the base making it artificially low. They needed that money one-time-only and therefore backed it out of the base.

Mr. Hamel moved to DP-5 Base Adjustment to Pollution Prevention which is a request to re-establish the base budget. Delays in hiring new FTE's resulting in a base deficit in operating expenditures. Staff vacancies in other programs resulted in fewer contracts being awarded under other federal environmental and energy efficiency programs. **Mr. Compton** stated the largest portion of the base adjustment is in federal funds. The small general funds involved of \$7,600 (02) and \$6,700 (03) are for the federal required match for two grants. The match ratio is 25% state and 75% federal.

{Tape : 1; Side : A; Approx. Time Counter : 170}

Motion/Vote: REP. TROPILA moved that DP-5 BASE ADJUSTMENT TO POLLUTION PREVENTION BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye via proxy.

Mr. Hamel presented DP-6 Base Adjustment to Technical and Financial Assistance to re-establish the base budget. There was a deficit in operating expenditures due to staff turnover and delays in contract implementation. **Mr. Compton** stated this DP is also mainly federal funds and is for technical assistance to

public water supplied for managerial and financial capacity development. The requests for general fund is the match for the federal radon funds. The majority of these funds were to make whole in the base budget items that were not expended the previous biennium. **Mr. Doug Schmitz, OBPP**, stated it is hard not to approve federal fund matches.

{Tape : 1; Side : A; Approx. Time Counter : 255}

Motion/Vote: SEN. CRISMORE moved that DP-6 BASE ADJUSTMENT TO TECHNICAL AND FINANCIAL ASSISTANCE BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel discussed DP-7 Base Adjustment to Monitoring and Data Management to fund increased operating costs such as higher lodging rates, safety improvements at air monitoring sites, and replacement of currently owned vehicles with state motor pool leased vehicles. **Mr. Compton** spoke to the general fund requests part of which are for installing handrails on the 25 air monitoring stations. It is an occupational safety issue that needs to be addressed. The remainder is performance partnership grant match for air and water monitoring efforts.

Mr. Hamel continued with DP-28 Move IT Positions to Central Management Program. This request was a decrease in the general fund to reflect the transfer of 2.0 FTE to the Central Management Program. The proprietary rate increase approved previously included the moving of these 2 FTE's.

{Tape : 1; Side : A; Approx. Time Counter : 333}

Motion/Vote: SEN. NELSON moved that DP-28 MOVE IT POSITIONS TO CENTRAL MANAGEMENT PROGRAM BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

DP-45 One Stop Grant for Information Technology is to enhance environmental information through information technology activities. The grant is furnished to those states that have demonstrated an initiative and the capability to further the goals of the environmental protection agency (EPA) in regard to information technology. These funds would be used in the Enterprise database conversions. **Mr. Curt Chisholm, Deputy Director, DEQ**, stated this was the grant the Department had referred to when presenting the Enterprise Database Conversion global issue. Only a few states have been awarded this grant. It is in the Planning Division due to the fact that they have done most of the work in preparing the grant and that Montana would be worthy of the grant. **Mr. Chisholm** added the general

fund commitment by the State was necessary to be awarded the grant.

{Tape : 1; Side : A; Approx. Time Counter : 450}

Motion/Vote: SEN. NELSON moved that DP-45 ONE STOP GRANT FOR INFORMATION TECHNOLOGY ONE-TIME-ONLY BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

The next DP was DP-60 Source Water Assessment-SRF is requesting federal funds to provide technical assistance and administration of the source water program. Mr. Compton stated this is a request in authority to expend federal funds.

{Tape : 1; Side : A; Approx. Time Counter : 485}

Motion/Vote: SEN. NELSON moved that DP-60 SOURCE WATER ASSESSMENT SRF BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel continued with DP-69 SRF Special Administration Account which is a request for language appropriation of \$100,000 to use funds from the special administration account to cover the administration costs of loans made from repayments.

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Information on the language was distributed for the committee to be discussed later.

EXHIBIT(jnh26a02)

The LFD issue is that the executive should be able to calculate the amount and number of anticipated loans and that amount should be requested in HB 2 with other budget items. The legislature could then restrict spending to the revolving loan program. Mr. Schmitz stated the language is an attempt to keep the bottom line down. Mr. Compton added the intent of this request is not to increase spending but rather to use the pot of money coming back to the DEQ from the SRF Program.

{Tape : 1; Side : B; Approx. Time Counter : 25}

Motion/Vote: SEN. NELSON moved that DP-69 SRF SPECIAL ADMINISTRATION ACCOUNT RESTRICTED TO REVOLVING LOAN PROGRAM AND RECOMMENDED LANGUAGE AS FOLLOWS BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

"The department is authorized to decrease federal special revenue money in the pollution control and the drinking water revolving fund loan programs and increase state special revenue money by a like amount within the special administration account."

Mr. Hamel presented DP-77 Lease Vehicles. This is to replace owned vehicles with leased vehicles. The office of budgeting and program planning has directed that aging vehicles be replaced with motor pool leases rather than purchasing replacements. The issue is that if DP-2 and DP-7 are not approved, this request could be reduced by one vehicle. **Ms. Jan Sensibaugh, Director, DEQ**, clarified that at one time a lease vehicle was in DP-2 and DP-7 but when the general funds were cut the vehicles were funded from other sources.

{Tape : 1; Side : B; Approx. Time Counter : 70}

Motion/Vote: SEN. CRISMORE moved that **DP-77 LEASE VEHICLES BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH** voted aye by proxy.

Mr. Hamel moved on to new proposals. DP-2 TMDL Quality Assurance Quality Control requesting federal funds to provide separate quality assurance and quality control functions for all water quality monitoring data collected. There are no general funds in this request. **Mr. Schmitz** stated the DP had been modified. **Mr. Compton** explained the DP further in regards to the TMDL Project. There are federally mandated monitoring requirements and the DEQ is short of staff to do the monitoring. This request is to help keep current on the data side of the monitoring. DP-2 and DP-3 TMDL Transportation Improvement were deferred.

Mr. Hamel discussed DP-5 Nonpoint Source Supplemental Funding requesting federal funds to continue support of non-point source grant activities and to increase the appropriation amount in anticipation of additional federal funding. **Mr. Compton** stated this is "where the rubber meets the road." It is the funds used to implement those measures to improve water quality. **Mr. Chisholm** advised DP-5 be deferred with the others on the TMDL.

Mr. Hamel discussed DP-6 State Energy Program Special Projects which is for competitive grant applications to the US Department of Energy (DOE). It would provide funding for Montana to apply for competitive grants targeted for specific activities, technologies, or audiences. It is all special federal revenue funds. **Mr. Compton** spoke about the current explosion in energy

conservation issues and that Montana has competed very well since the DOE has moved away from population-based formula grants for funding energy programs. This would be the spending authority if the grants become available.

{Tape : 1; Side : B; Approx. Time Counter : 205}

Motion/Vote: SEN. NELSON moved that **DP-6 STATE ENERGY PROGRAM SPECIAL PROJECTS BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.**

DP-7 Environmental Monitoring and Assess (EMAP) was a request for federal funds to increase grant amounts for the national water quality monitoring program. Montana received a grant for the state portion of a national water quality monitoring program that is designed to gather data for randomly selected lakes and streams over a five-year period. **Mr. Compton** stated these funds are important for the DEQ and is another source of federal support. Since the EMAP program is new, **Mr. Compton** felt the LFD issue that the 1999 legislature authorized \$55,000 in each year of the biennium was in reference to another program. **Mr. Hamel** will research that issue. There was a question as to whether this DP was related to the TMDL but **Mr. Compton** assured the committee it was not and could be acted upon.

{Tape : 1; Side : B; Approx. Time Counter : 308}

Motion/Vote: SEN. CRISMORE moved that **DP-7 ENVIRONMENTAL MONITORING AND ASSESS BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.**

DP-11 Technical Assistance to Tribal Air Program is a request to use a federal grant to provide technical assistance to the air quality monitoring programs of the Blackfeet, Northern Cheyenne, Fort Peck, and Confederated Salish and Kootenai tribes. The supported monitoring consists of eight high volume air filter sites, two continuous air filter sites, and four meteorological sites. **Mr. Compton** stated they work with eight counties to monitor the air quality for the State. These funds are to give technical and training support to the staff conducting the monitoring. There was discussion about the activities on the reservations that might require monitoring air quality. **Mr. Gary Ingman, Chief, Data Management Bureau,** stated the Tribes are developing their own air monitoring programs and EPA is in support of that. There are wood products facilities, asphalt plants, emissions from Colstrip, and urban population problems that affect the air quality on the reservations. **Ms. Sensibaugh**

was not aware of any specific problems at the Fort Peck Reservation other than general preventative concerns.

{Tape : 1; Side : B; Approx. Time Counter : 470}

Motion/Vote: SEN. NELSON moved that DP-11 TECHNICAL ASSISTANCE TO TRIBAL AIR PROGRAM ONE-TIME-ONLY BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel continued with DP-13 NRIS Core Funding requesting additional funding for the Division's share of funding the Montana State Library Natural Resource Information System. The amount was determined based on a three-year average of use.

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Motion/Vote: REP. TROPILA moved that DP-13 NRIS CORE FUNDING BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel discussed DP-25 Technical Assistance which is a funding switch for wastewater technical assistance. This is to conduct non-SRF activities such as evaluating enforcement actions and troubleshooting. DP-26 Wastewater Technical Assistance is a funding shift from federal special revenue to general fund for activities directly related to administration of the water pollution control state revolving fund program. The LFD issue for both DP's is that it would increase general fund spending although the Martz budget has reduced the amount of the funding shift in DP-25. Mr. Chisholm and Mr. Compton explained the program. Mr. Chisholm stated the Department has done some "horse trading" to allow this position to continue. They received word just recently that the EPA has extended by at least a year the ability to spend some federal funds; therefore, the DEQ is preparing to ask for additional federal spending authority. It is not in a formal schedule at this time but they hope to bring it before the committee soon. He is asking the committee to defer action on DP-25 and DP-26 until the formal presentation can be made. CHAIRMAN HAINES clarified the situation. Mr. Compton explained the technical assistance and the importance of it to the communities. It is the most highly requested assistance by communities and they hope to keep the position. CHAIRMAN HAINES deferred action on the two DP's.

{Tape : 2; Side : A; Approx. Time Counter : 172}

Mr. Hamel discussed DP-59 PM 2.5 Monitoring is requesting federal appropriation authority and 3.0 FTE for air pollution monitoring

of fine particulates. It is a federal grant which would continue at approximately its present level, but Montana must continue to administer a monitoring program. Although **Mr. Hamel** suggested it might be restricted and one-time-only, **Mr. Schmitz** pointed out it was an on-going program that might not need to be requested every year. **Mr. Compton** agreed it is a federal requirement and on-going and might not need to be restricted and one-time-only. The agency has no choice but to do the monitoring. The 3 FTE are in place and have been since last session and are supported by the federal grant.

{Tape : 2; Side : A; Approx. Time Counter : 223}

Motion/Vote: SEN. CRISMORE moved that DP-59 PM 2.5 MONITORING RESTRICTED BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel continued with DP-99 Modified Level FTE to Current Level which is a request to transfer operational authority to create one FTE permanently for a wetlands grants manager. The EPA asked DEQ to increase oversight of the wetland conservation grants and agreed to furnish funding for a position in 1997. Funding has been provided consistently and is anticipated to be on-going.

{Tape : 2; Side : A; Approx. Time Counter : 296}

Motion/Vote: SEN. NELSON moved that DP-99 MODIFIED LEVEL FTE TO CURRENT LEVEL BE ADOPTED. Motion carried unanimously. REP. KAUFMANN and SEN. TASH voted aye by proxy.

Mr. Hamel spoke to the language recommendations. The language submitted per exhibit 2 replaced language on page C-82 recommended by the LFD.

{Tape : 2; Side : A; Approx. Time Counter : 415}

ENFORCEMENT DIVISION

Mr. John Arrigo, Administrator, Enforcement Division, DEQ, gave an overview of the agency.

EXHIBIT (jnh26a03)

Mr. Arrigo stated in 1996 DEQ created an Centralized Enforcement Division to centralize all the enforcement functions in the agency. The Division has two major functions-to operate a

complaint management clearinghouse and formal enforcement case management with the Case Management Bureau and the Complaint Management Section. All citizen complaints regarding environmental issues must go through this division. He stated a number of methods violations are discovered and the enforcement actions that might take place. The goal of the Enforcement is compliance. He covered the types of complaints received and the types of enforcement conducted by case type.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Mr. Arrigo continued with the graph of the complaints managed from July 1996 through December 2000. They average about 100 new cases per year and are able to close about 75 per year with 250-350 complaints on-going at any one time. He presented a chart of the annual amount of penalties collected and deposited in the general fund and special revenue accounts. On the average they collect about \$225,000 per year in penalties. **Mr. Chisholm** spoke about a bill before the legislature to allow the deposit of funds that are currently going into the special revenue accounts to be placed in an environmental contingency account. This would be to take care of remedial action that has no funding source for emergency problems encountered. That bill is currently being discussed.

{Tape : 2; Side : B; Approx. Time Counter : 55}

Mr. Arrigo stated the exhibit also includes a statistical report and the funding sources for the DEQ Enforcement Division.

REP. KAUFMANN asked how the number of complaints compares to ten years ago. **Mr. Arrigo** stated that information was not available since the Department did not have numbers prior to 1996.

Mr. Hamel discussed DP-8 Base Adjustment for Enforcement Division to adjust funding for operating increases resulting from the reclassification of an existing FTE to a technical position. **Mr. Arrigo** stated they have reclassified an FTE. Previously it was a half-time position and since they could not keep it filled, they reclassified the position as full-time technical. He gave examples of how hiring outside help to advise on projects has cost more funds than the staff person would cost. **CHAIRMAN HAINES** asked about shifting some of the funding out of general fund. **Mr. Arrigo** gave a history of the FTE's and the funding explaining why general funds are necessary. Some of the fee programs restrict the usage of the fees.

Mr. Chisholm explained when the DEQ was organized and the Enforcement Division was formed, it was their intent to provide consistency and reporting consistency in handling the matters. At that time it was decided 50% of the funding for enforcement was to come from the general fund. They have looked at alternatives but have not found any that would be acceptable. There was further discussion about other revenue sources being limited on their uses. **Mr. Arrigo** stated the Enforcement Division is the only unit in the department that generates money into the general fund. In the last four fiscal years, approximately \$200,000 a year has been generated.

{Tape : 2; Side : B; Approx. Time Counter : 418}

The Department pointed out that the total of the three DP's for the Department net a smaller total increase to the general fund than the amount in DP-8. **Mr. Hamel** commented the other two DP's are not related to DP-8; the reductions do not necessarily reduce DP-8 but rather transfer it to the general fund in another division. There was further discussion about the total general fund request and the possibility of increasing fees.

{Tape : 3; Side : A; Approx. Time Counter : 0}

CHAIRMAN HAINES asked the department to look at the general fund requests one more time. **Ms. Sensibaugh** replied they appreciated extra time to do that.

Mr. Hamel continued with DP-29 IT Positions to CMP - Program 30 which is a request to transfer funding for one FTE from the Enforcement Division to the Central Management Program.

{Tape : 3; Side : A; Approx. Time Counter : 30}

Motion/Vote: **SEN. NELSON** moved that **DP-29 IT POSITIONS TO CMP - PROGRAM 30 BE ADOPTED**. Motion carried unanimously. **SEN. TASH** voted aye by proxy.

Mr. Hamel presented DP-35 Legal Staff Changes - Program 30. This is a request for an additional .50 FTE in order to fund anticipated legal services. **Mr. Arrigo** stated they have tracked legal time and determined the additional .50 FTE was necessary; therefore, a redistribution of the legal resources in the DEQ was made.

{Tape : 3; Side : A; Approx. Time Counter : 55}

Motion/Vote: SEN. CRISMORE moved that DP-35 LEGAL STAFF CHANGES - PROGRAM 30 BE ADOPTED. Motion carried unanimously. SEN. TASH voted aye via proxy.

{Tape : 3; Side : A; Approx. Time Counter : 60}

REMEDIATION DIVISION

Ms. Sandi Olsen, Administrator, Remediation Division, DEQ, gave an overview of the division per the following exhibit.

EXHIBIT (jnh26a04)

She stated the functions and responsibilities of the division; its objectives which in all activities is to protect public safety, health, welfare and the environment; and the remediation activities. The Division consists of four programs-the Fiscal and Administrative Services, Hazardous Waste Site Cleanup Bureau, Mine Waste Cleanup Bureau, and the Technical Services Bureau.

Ms. Olsen listed the duties of each program per the exhibit. She covered the highlights of the division goals and objectives; the major accomplishments of each program; and the fund types. Sixty percent of the funding is federal funding and forty percent is state special. There are no general funds in this Division. There are two federal EPA grants, one of which requires a two percent match.

{Tape : 3; Side : A; Approx. Time Counter : 263}

SEN. NELSON asked about HB 158 and the rules implemented which indicate two inspections are necessary. **Ms. Olsen** stated there are two sources available for inspectors, private or county, but only one inspection is required. **SEN. NELSON** asked for a list of the 30 facilities that were not in compliance.

Mr. Chisholm clarified that the permitting function for underground storage tanks is in the Remediation Division rather than the Permitting Division due to the fact that the entire underground storage tank program was left in tact because of the inter-relationship between how tanks are permitted and how they remediate the leaks.

{Tape : 3; Side : A; Approx. Time Counter : 325}

Mr. Chisholm asked to present a separate issue that may appear later. In a recent audit, it was brought to their attention the law was not being followed relative to accounting for supplemental environmental projects in the process of fining a

member of the regulating entities. He gave an example of giving an entity credit for doing cleanup work and in turn reducing a fine. This should be recorded as a receivable item to the DEQ in the amount of the cleanup project and they are not recording it. The DEQ did not know how to record funds in accounts receivable general funds when funds were not actually received. All parties have met and agreed on a method to record these funds. They asked the committee to sponsor a Committee Bill to fix the problem.

Ms. Ann Danzer, Administrator, Centralized Services Division, DEQ, explained the issue further. She stated all fines and penalties are deposited in the general fund. Any settlement would also have to be booked in the general fund. Auditors want both booked and expensed to show. The purpose of this is to let the legislature be aware of agency activities in these settlements particularly in regard to how much money was involved. It is possible these amounts should be more appropriately booked in the State Special account where they could submit a budget request for private funds to offset the booking. **REP. TROPILA** stated this would amount to work credited in lieu of fines and a value needing to be placed on the work done. **Mr. Schmitz** added any state agency with police powers or enforcement authority would be affected by this.

CHAIRMAN HAINES suggested the DEQ prepare a bill draft and bring it to the committee. The DEQ's in-house attorneys will do that.

{Tape : 3; Side : B; Approx. Time Counter : 0}

The committee continued with the DP's. **Mr. Hamel** stated although there were no general funds involved, approval of all the decision packages with a variety of one-time-only requests would increase the base \$5.5 million. DP-9 Base Adjustments are for miscellaneous operating expenses and would be funded from state and federal special revenue sources. **Ms. Olsen** stated the primary reason for the prolonged vacancies, which they expect to fill in the near future, was tied to the reorganization of the Petroleum Tanks Release Compensation Board staff and to the adoption of HB 158 setting up the compliance inspection program for the underground storage tank program. Due to the reorganization of those two programs, they left ten positions vacant to determine where they would best be used. She explained the positions specifically. The vacancies were prolonged due to the job descriptions being written and not due to inability to recruit.

Mr. Hamel pointed out that a portion of the request is for the Division's share of the database conversion. **Ms. Olsen** explained that portion further.

{Tape : 3; Side : B; Approx. Time Counter : 100}

CHAIRMAN HAINES expressed concern about the \$5.5 million increase and felt time was necessary to determine a consistent method to deal with the amounts. There was further discussion of the amounts and the possible affects on the base. **Ms. Olsen** explained the Orphan's Share Account. **Mr. Chisholm** asked for further direction as to how the requests might be broken down. **CHAIRMAN HAINES** stated he needs to be able to justify the requests to the full House Appropriations Committee when subcommittee meetings are complete.

CHAIRMAN HAINES adjourned the meeting.

February 1, 2001

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ADJOURNMENT

Adjournment: 11:45 A.M.

REP. DICK HAINES, Chairman

SANDRA WHITAKER, Transcription
Secretary

DH/SW

EXHIBIT (jnh26aad)